

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA CASTRO)	
Claimant)	
VS.)	
)	
IBP, INC.)	Docket No. 190,478
)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Pamela J. Fuller on December 23, 1998. The Appeals Board heard oral argument June 15, 1999. Board Member Gary M. Korte has recused himself from participating in this case and Stacy Parkinson of Olathe, Kansas, has acted as Board Member Pro Tem in his place.

APPEARANCES

Thomas R. Fields of Kansas City, Kansas, appeared on behalf of claimant. Gregory D. Worth of Lenexa, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits for a 13 percent disability based on functional impairment. On appeal, claimant contends she has a work disability. Claimant also argues that the ALJ failed to consider claimant's request for work disability and did not consider testimony from Michael J. Dreiling, Dr. Bernard F. Hearon, or Dr. Edward J. Prostic.

Respondent contends that under K.S.A. 44-510(c)(2) the deposition testimony of Dr. Prostic is not admissible. According to respondent, unauthorized medical expense was used to pay for the rating report of Dr. Prostic. Respondent also argues that claimant has submitted no other testimony which would establish a task loss. Finally, respondent argues that claimant did not make a good faith effort to find employment and a wage must be imputed to claimant in applying the work disability formula.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the case should be remanded for consideration of the entire record.

The Award does not list as part of the evidence, and it otherwise appears that the ALJ did not consider, the testimony of three witnesses deposed in this case—Dr. Hearon, Dr. Prostic, and Mr. Dreiling. All three were taken by the last terminal date set for the party presenting the testimony. The depositions of Dr. Prostic and Mr. Dreiling were presented by claimant and were taken before claimant's terminal date. Dr. Hearon's deposition was taken on the last date for evidence by respondent. The testimonies of all three witnesses were intended as part of the record in this case.

Respondent has objected to the testimony of Dr. Prostic on other grounds. Respondent argues that Dr. Prostic's testimony should not be considered because his examination and initial report were paid for with unauthorized medical expense. Respondent asserts that K.S.A. 44-510(c)(2) applies to preclude use of Dr. Prostic's testimony for any purpose. Claimant, on the other hand, contends the second report containing a loss opinion was paid for by claimant and should be admitted into evidence. The Board does not intend by this remand to rule on that objection. This is a ruling the ALJ should make in the first instance.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on December 23, 1998, should be, and the same is hereby, remanded for decision on this case after considering the entire record after first determining whether the deposition of Dr. Prostic should be part of the record.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas R. Fields, Kansas City, KS
Gregory D. Worth, Lenexa, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director